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Humble Propofal

T O

Cause B A N C R U P T S make better
and more speedier Payment of
their Debts to their Creditors,

Than,

By long Experience hath been found,
the Statutes againſt Bankrupts do effect ;

Or,

Than any other Way hitherto Propo-
fed, hath ſhewen.

*By a Well-wiſher to Trade, and the
Publick Good.*

London, Printed in the Year, 1679.

Humble Proposal

That the said Bankers make better
and more speedy Payment of
their Debts to their Creditors

By long Experience hath been found
the surest against Bankruptcies to effect

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Than any other way
which hath been

By a Bill passed in Trade, and the
Publick Good.

Printed in the Year 1706



An Humble PROPOSAL, &c.

THE Benefits proceeding from Trade, are Obvious to all, every one granting, it advanceth our *Manufactur's*, our *Growths*, and the *Land* it self in Value : Yet few, so seriously as they ought, do consider the Coyne's of this *Worthy Dame*, who Espouseth her Self to none, longer than they bid a free Welcome, and kindly Care's both Her and her Followers; And therefore it's a wonder, we have had so greatly her Favour, since we treat her Retinue with so much *Inhumanity*; For when any of them chance to be cast behind by Misfortunes, we Seize with all Violence, and cast them into Prisons, where they lie like the *Damned*, without a *Moments* Reprieve or *End of their Torments*; pursuing them with all the Rigour that Law can inflict, how unequal or inhumane soever we esteem the *Process*, were it turn'd on our selves. For what more unnatural Proceedings can there be by any Law, than

is found in the Practice of that against *Bancrupts*, where when they have once taken out a Commission against any, by the Authority thereof, they Convene persons of all Ranks before them, where you have poor helpless Women (to heighten their sorrow) frighted with Commissioners by the menaces of a Prison, and forc'd to swear against their Husbands, Children against their Parents, Parents against their Children, Servants against their Masters, and the intimatest Friends, one against the other: And in such cases oft-times it happens, where neither Imprudence, Neglect, or Vicious Living hath caused their Misery, but hath rather come to pass by the malice of some contemporary Rivals with them in Trade, who have devised variety of ways to despoil them of Credit; and so destroying the Reputations of such who have great Concerns abroad, do easily lay waste their Estates at home; Or else they may be undone by some *Loss at Sea*, or other *meer fatal stroke of Misfortune* proceeding from *Causes unseen*, or *Accidents unthought on*; which do often befall the *Best*, the *Diligentest*, the *Frugalest*, and *Wariest* of Men, it once plunged in Business, and immersed in Worldly Affairs.

And

And some such at times it lights on, whose Intentions are far from all Fraud, and whose Conversation in Trade was ever found upright and honest, as their Ruin might rather merit compassion, and that Collections by Publick Briefs should be made, (as Authority in other Cases (for he as well deserves pity, who hath his Estate sunk at Sea, as he that hath his House burnt at Land) not less deplorable, does allow) wherewithal to sustain them and their Families; than to have that little Estate which remains, with all the Cruelty of an unnatural Law, torn out of their hands, when they had preserved and collected it for no other end, but equally to share out to their Creditors, on condition of their own Liberty; A Contract so just, no good Man disallows: freedom of Person from Confinement being the old English Law, till the desire of Gain prostituted that Native Right, and introduced these *Estate-destroying, Spirit-breaking, and Ingenuity-starving Imprisonments*, which are so commonly practised amongst us, because they are now established by Law, and which by sad experience is found prejudicial to both Creditor and Debtor, beyond what the Primitive Contrivers designed, as we may in charity judge: Prisons in reason most proper
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(if for any) for the *stubborn and wilful*, not the *weak and unable*.

So that if the violentest prosecuting Creditors, or the very Commissioners themselves, who are Authorized and Accustomed by Law, to ransack and rifle decayed Mens Estates, were thus melted into the same Mould by Misfortunes, they would judge it right Reason, there should be an Abrogation of these Statute Laws against Bankrupts, or at the least, that they would become so favourable and kind to their *Children*, their *Kindred*, and *Friends*, which might out-live their *good Fortunes*, as willingly to move by Petition the Honourable Houses of Parliament, now sitting, for Redress of Grievances; that this might as a main one be redressed, either by abolishing these *Estate-wasting Statutes* of Bankrupt, wherein none but Commissioners and Assignees are accustomed to make Profit. Or at least, that they would by Law capacitate the *Majority of Creditors* to make Agreement conclusive and binding to the whole, with their Debtors; especially with such who have lain under the *Purgatory of Trial for some years*, not only without the least Benefit, but to the great *Loss of their Creditors*; tho their Persons have been confined to severe Imprisonments, and their Estates subject as it were

were to the Inquisition, (a Court in other cases at this time so hated in *England*) undergoing all the severities that the three Statute Laws now in force can impose on Men so infortunate ; and wherein each one, like *Nebuchadnezzar's* Furnace, have been made *hotter by degrees* ; as if the Law-makers of those times had intended to have forced all Men beyond *Fate*, and through *Fear* to have made all *honest* or *fortunate*.

And tho some do suppose this Law of the *Major* part bearing sway, is in Reason unjust, and in no case ought to the *Minor* in value be binding, which they argue from a Principle *mainly Fundamental*, That every Man always hath Right to dispose of his own, how, and which way he pleaseth, and that therefore these Honourable Houses of Parliament cannot take cognizance, by this means to redress such a Grievance.

To which it is replied, That if Circumstances be so set, as renders *private Property* a *Public Grievance*, in such cases it seems reasonable, that the *Public* do exercise their Authority to convert this *private Grievance* into their *Common-weal*. Which Course in making Laws is most frequent and in use. The like whereof in some kind hath lately been practised by the last Parliament, disposing

posing the Properties of so many thousands of Persons by that Ten-pound Act, as could not well amount unto less than a Million of Money, whereby was most mercifully delivered many Hundreds of poor starved Prisoners from Jail, some whereof brought considerable Estates with them into Prison; so that had there been this Law of the *Majority* in force, it would not only have thus prevented their Ruin, but in all probability, those *considerable Sums now lost or spent*, had then been *paid to their Creditors*.

But to make it appear, that Property in some Cases may amount to a *Grievance*, especially in such Nations where Trade is admitted, and where it is most frequent, as in this of ours. Let us set before us the *State of our Navigation*, which is the *Strength of our Kingdom*, and the *Vehicle of Trade*; commencing its Rise and happy Success in this and all Nations, from the *Majority ruling the Minority in value*; and which by continued experience is found so wholsom a Law, as will never perish whiles Trade and Navigation lasts in the World. Now the usual Method of Merchants is to build Ships in shares, which they commonly divide into $\frac{3}{4}$ or Quarter parts, if of small value; but Ships of greater burthen they usually branch into more, as $\frac{8}{16}$ or $\frac{32}{32}$ parts. Which

Which to make yet more plain to our purpose, we will suppose the Charge of a Ship to cost 6400*l*. (tho the Cost and Charge of most of our *East-India* Ships set to Sea, comes to well nigh double the value); now that Owner who hath $\frac{1}{32}$ part, costing but 200 *l*. hath as true a propriety as he that hath $\frac{1}{16}$, or one half part, amounting to 3200 *l*. and therefore by this Law of Propriety she can undertake no design of a Voyage without his concurrence, how profitable soever it appears to the rest of the Owners; nay, tho their Arguments to him were cogent enough to persuade, and that their Reasons convince him, there is nothing but Gain attending the Project; yet being not his Interest to consent, because his Resolution is fixed on the Ruin of that Owner, who hath one half part of the Vessel, in regard he knows more of his Estate is therein laid out than he ought to have done on such a Design, and that he hath made too bold with his Credit; and therefore by stopping all Voyage, he constrains him to sell at great Loss, or else at the price of his small Share, will condemn the Ship to lie and rot by the Walls. Or it may otherwise happen, Owners design her a Voyage, to them all in appearance most gainful; but with such Merchandize she freights to a Port, as to him would prove more

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than

twice the loss of his small part in the Ship, by bringing down the price of such Goods; as he hath engrossed large store of in the said place; so that for him to consent in the Voyage is *morally impossible*, without the force of a Law, since *Interest* to him (and all Men) is always *Reason* in *Trade*. And therefore for Redress of this Mischief, by experience the best Course hath been found, to form into a Law, that $\frac{2}{3}$ parts interest shall govern $\frac{1}{3} \frac{2}{4} \frac{1}{4}$; and $\frac{1}{8}$ parts gives Law to $\frac{7}{8}$, as doth 9 to $\frac{7}{16}$, &c. And tho this Demonstration seems too prolix, for which the Reader's kind pardon is begged; yet since the whole Argument of the *Hinderance and Let of this Law* seems chiefly to hang upon this *Pin of Propriety*, 'tis fit to use plainness of Reason to pull it out, and to shew with all clearness, that *particular Interest* may be prejudicial to *common Concern*, and without the *Force of Law* cannot be made *consistent with the Public Good*.

Furthermore, this Instance of *Ship and Owners*, bears some resemblance with *Creditors* and their *Debtor*, where every Creditor hath embarked a share, or is Owner in this losing Voyage of the Debtor, and wherein are found many *various Interests*, *cross Intrigues*, and *humorous wilful Devices* to mischief one another, where every one hath

hath not his will, each Man projecting and devising with himself, which way he shall manage to obtain the most for his share, how destructive soever it be to the Public Concern. And he who is concerned 100 l. being rich, and well able to sustain its Loss, hectors and insults with all violence over another poor Creditor concerned for more then he is able to bear, and with much vaunting Humor at all Meetings boasts he will *have all, or lose all*: which often proves also *baneful* to the *credulous Widow*, unversed in Business, who hath placed her All in so unhappy an hand; and no less to be lamented is the *helpless Orphan*, who hath the whole of his Maintenance left to sustain him envelop't in the like fatal Misfortune. Both which might better spare the loss of *one Third*, or a *Half of their Estates*, as many times at the first is offered them, than to be dispoiled of the *whole*, by these *wilful Humorists*, grasping at their all, till all by their delay is spent or lost. Infinite Examples *most deplorable* may of this kind be shewn, and more will daily come to pass, except the Wisdom of our Law-makers, by this only Remedy, prevent it, Enacting, that in all cases of this kind, the *Majority of Creditors*, like that of *Ship-Owners*, give Rule and Law to the lesser in Interest concerned.

Wherein it will also be further needful for the Redress of this ~~so grievous a Grievance~~, that all Executors, Administrators, Guardians, Trustees, and other Persons, disabled by means of the present Laws, be enabled by some Clause in a new Law, to accept of any Offer, and to make any Composition or Agreement, with the Debtor, for less than the whole Debt, as if it was their own Concern; and shall by no means be liable to account with their Wards, Cestuique Trusts, or other Persons whatsoever, for more than what they do in very deed receive on such accounts; else will the Remedy be so little hereby removed, as will leave all to the old Confusion.

It will no less be necessary, that one thing more on the Debtors behalf be commodod, whereby to enable his performance (as the Creditor to comply) with his Agreement; otherwise not one in ten Persons will be able to make good their Accords, because of the Reasons which follow.

For no man becomes *Insolvent*, or *Breaks*, who hath the remaining Estate reserved in ready Mony in his hands; But lies in Debts, Goods, Merchandise, or some other thing worth Mony concealed, so that by receiving which Debts, and selling those Goods at Market-like value, he calculates,

culates, will amount to the offer he made his Creditors, and to which they have already agreed.

But our present Law being such, as one can securely pay a known Bankrupt the Money he owes him, nor buy of him any Goods, without fear of paying twice for them; Because if the Bankrupt perform not his Composition (by what Accident soever it happens) the Debtor, as also the Chapman to the Bankrupt, do both of them repay their Monies to the Statute on foot; which is the very Cause, why some men (when Statutes against them are once taken out) foreseeing themselves split on this Rock, do never make their Creditors any offer at all: And others, (who setting to Sea, with better Fortune, as they thought) gaining the prosperous Gale of their Creditors universal consent and accord, have scarce gon a League on their Voyage, before they have sunk on this Sand, as unable to Comply; because no Debtor would pay, no Chapman would buy, except at price so low and vile, as would re-insure him all prospect of Loss that might in futurity happen. Whence it comes to pass, to the Creditors great loss and damage, that the Bankrupt gives one Moyety of his Goods, to have Money for the other part paid him, which may be said

now to be the effect of the Statute as above shewed

the true Cause, when Statutes are once taken out, so few Men (of any thing) make offer, and fewer are able to perfect their Accord: but are hereby plung'd into Miseries far greater, and accounted more Knaves than at first.

For Remedy whereof, it is in like manner needful, when the Debtor hath once accorded with the *Majority* of his Creditors; that then all Monies paid, or Sales of Goods made, should be allowed of as firm and good in Law. Which will undoubtedly produce less loss to Creditors; by reason the Debtor, being made thus capable to perform, will *alwayes make offer of the remaining Estate in his hands* (it resting in the power of the *Majority* to reject his Proposal, if they be not fully perswaded that he does them Right:) for not one Man in many, is so void of all honesty, or born so much a Knave, but prefers his *Liberty*, before his *Confinement*, it being only the aforesaid Impossibility of his Compliance, which imposes a necessity upon him, silently to acquiesce; and with the *Proverb* to conclude, That since it must be a sorrow, *A Fat one is better than a Lean*: And so, I say, without struggling, he calmly surrenders himself, to philosophize with his *Goal*, and willingly undergoes the *Verdict of his Creditors Jury*, to make Dice of his Bones. Which Course doth as often affect the Creditor with
Torment,

Torment, as it feeds the Debtor with *Affliction* : Producing no real benefit to any but *Goalers* ; whom it feasts with all Delicates, and Clothes them in Gayities, affording the attendance of Coaches and Foot-boys, arrayed in Liveries more sumptuous, than Keepers of poor Prisoners, unable to pay their *Debts*, should require (by their Commitments in *Salva Custodia*) to keep them.

And all this occurs, through the *Inadvertency* of *Creditors*, who daily go on lining their Prison Chambers with fresh Debtors, traught with *Your Estates* ; which the *Goaler* extorts with all *Cruelty*, from *your Debtors*, with such Tricks and Devices out of the Verge of all Statutes ; nor can any Law be formed to prevent them, except each Month in the Year, a new one be made : So craftily do's this *Goal-abuse*, Spawn from the *first Grievance*, which admits of no Cure, like the Law we propose, of the *Majority* in Value, to Govern the rest concern'd. Whereof, we may be confident, a smal time of Trial, would most effectually shew it, a true Means to regulate Trade and Traders in this point : And would no less retrace the Imprudent misfortune of those Creditors, who constitute *Goalers Guardians* of *their Estates*, in *their Debtors Hands*, which seldom with better Fortune succeeds, than that of his, who set the *Wolf* to guard the *Lambs*.

F I N I S.